IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.258 OF 2005

Indian Oil Corporation Ltd. ... Petitioners

v/s

Hindustan Construction Corporation Ltd. and anr. ... Respondents

Mr Gaurav Joshi i/b M/s Sarkar and Sarkar for Petitioners.

Mr V.S. Samudrala for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 30TH NOVEMBER 2005.

P.C. :-

1. By this petition, the petitioners challenge the award made by the Sole Arbitrator dated 28th January 2005 awarding amounts in favour of the respondents against claim Nos.2 and 3. The petitioners therefore challenge the award made against claim Nos.2 and 3. So far as the award made against claim No.2 is concerned, the learned counsel appearing for respondents concedes that the award made against claim No.2 is liable to be set aside. Therefore, on the basis of this concession, the award made against claim No.2 is set aside.

2. So far as the claim No.3 is concerned, by that claim, the respondents were claiming refund of liquidated damages from the amount payable to them because they did not complete the work within the time allowed. To this claim, an objection was raised that this is one of the excepted matters within the meaning of the contract, therefore the Arbitral Tribunal has no jurisdiction to make an award in relation to this claim. In the written submissions, the petitioners had relied on clauses 17, 18 and clause 6 of the contract to contend that the Arbitral Tribunal does not have jurisdiction to make an award. It was also the claim of the respondents that the claim made by the respondents

is barred by the law of limitation because the cause of action arose in January 1992 whereas the reference was made in April 1999. It was also one of the defences raised that the respondents have accepted the amount as full and final payment and therefore, they could not make a reference. Perusal of the award shows that none of these objections which were raised by the petitioners for even been referred to by the learned Arbitrator in the award. From clauses 17, 18 and 6 of the contract, it is clear that there is considerable substance in the objection raised on behalf of the petitioners that the issue is not arbitrable. It is clear that the award made against claim No.3 suffers from non-application of mind to most relevant and material aspect of the matter. The award is clearly in breach of principles of natural justice and therefore, it is liable to be set aside. In the result therefore, the petition is allowed, the award made against claim Nos.2 and 3 is set aside. The respondents are directed to pay cost of this petition as incurred by the petitioners to the petitioners.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.